



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/07/02	Bill No:	SB 1502
Tax:	Sales and Use	Author:	Johnson
Board Position:	Support	Related Bills:	SB 1501 (Johnson)

BILL SUMMARY

This bill would relieve the successor of a business of any penalty that accrued by the seller of a business or stock of goods prior to the successor being notified by the Board of the seller's unpaid sales and use tax obligation.

ANALYSIS

Current Law

Under existing Section 6811 of the Sales and Use Tax Law, if any person who is liable for any amount of tax sells out his or her business or stock of goods or quits the business, his or her successors must withhold from the purchase price an amount sufficient to cover that liability until the seller produces a receipt from the Board showing that the liability has been paid or a certificate stating that no amount is due. Section 6812 requires that if this procedure is not followed, the successor (purchaser) becomes personally liable for the seller's liability, to the extent of the purchase price of the business. The Board is required to notify the successor of the liability no later than three years after the Board is notified of the purchase of the business or stock of goods.

Section 6814 allows the Board to relieve a successor of any accrued penalties if the failure to withhold a sufficient amount of the purchase price is due to reasonable causes and circumstances beyond the successor's control. Current law does not allow the Board to relieve the accrued interest.

Proposed Law

This bill would amend Section 6814 of the Sales and Use Tax Law to relieve a successor of any penalty on the obligation of the seller of the business or stock of goods that has accrued prior to the successor being notified by the Board of the seller's unpaid obligation. The bill would specify, however, that these provisions would not apply to persons related to the seller, as defined.

The bill would become effective January 1, 2003.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

In General

Any purchaser who fails to obtain the necessary tax clearance from the Board, or who fails to withhold the predecessor's liability from the purchase price of the business, becomes liable as of the date of the purchase of the business or as of the date the predecessor's liability becomes final. As a policy, first efforts to collect the amounts owed are directed against the predecessor. This policy is adhered to as long as collection in full can be made within a reasonable period of time, either directly from the predecessor or from assets belonging to the predecessor held by a third person. However, this policy is disregarded if collection from the successor will become jeopardized by delaying future collection action.

A "Notice of Successor's Liability" billing may be issued under the law not later than three years after the Board is notified in writing of the purchase of the business or stock of goods. The statute of limitations for issuance of the notice does not begin to run until the Board has been notified in writing of the purchase of the business. If there is no notification, *there is no statute of limitations*.

On average, the Board issues approximately 80 to 90 billings for successor liability each year.

Background

The provisions that allow for a successor of a business or stock of goods to be held personally liable for the former owner's liability have been in the Sales and Use Tax Law since 1943. Recognizing that successors are often caught unaware of the liability until after the Board mails its notice of liability, the Board has sponsored provisions in the past to "soften" the statute. For example, in 1979, through the enactment of SB 287 (Ch. 260), the Board sponsored amendments to Section 6814 to give a successor a statutory procedural remedy for contesting a liability asserted against him for the seller's sales and use tax obligations. Prior to enactment of SB 287, a successor was given some kind of opportunity to contest the liability, however, there was no statutory right to do so and the procedure was not uniform. The remedy in SB 287 is essentially equivalent to that of petitioning an ordinary determination of a sales or use tax liability.

In 1989, the Board also sponsored SB 151 (Ch. 768) to amend Section 6814 to establish a statute of limitations concerning notices of successor liability, and to establish the authority to relieve penalties originally imposed upon the seller of the business that are included in the successor billings. Prior to enactment of this measure, the successor had no opportunity for relief of any penalties incurred by the seller that were included within the liability assessed against the successor. Also, there was no provision in law to require the Board to mail the notice of successor liability within a specified time period. This measure required the Board to mail the notice within three years from the date the Board is notified of the purchase of the business.

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author. Its purpose is to relieve the successor of any penalties that accrued on the predecessor's liability prior to the successor being notified from the Board of the liability. In a specific case brought to the author's attention, the Board issued a notice to a successor of a liability incurred by the predecessor of the business. The notice was mailed years after the business was purchased, and by that time, had a penalty and significant amount of accrued interest.
2. **The May 7, 2002 amendments would limit the relief to penalties only, and would exclude persons related to the seller from the relief provisions.** In the introduced version, SB 1502 would have additionally relieved a successor of the accumulated interest that accrued prior to the Board's notification. The related person exclusion was recommended in the Board's previous analysis, since successor liabilities can arise from situations in which a sole proprietorship incorporates, or where a partner takes over a business.
3. **Related legislation.** A similar measure to provide relief for a successor of a business has also been introduced by Senator Johnson (SB 1501). That measure would require the Board to exhaust all available collection remedies against a seller of a business or stock of goods who is liable for amounts due to the Board before pursuing collection efforts for that liability against the successor. The bill would additionally relieve the successor of any interest and penalty on the liability that accrued prior to the Board exhausting those remedies. The Board voted to be neutral on SB 1501.

COST ESTIMATE

Administrative costs would include revising Board manuals and providing directives to staff. These costs are expected to be absorbable.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

During calendar year 2001, the Board issued 78 successor liability billings. The amount of penalty that had accrued prior to the notification of the successor's liability amounted to approximately \$900,000.

Revenue Summary

The revenue loss from relieving the successor of any penalty that has accrued prior to a specified notice is estimated to be \$900,000 annually.

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